

November 20, 1989

USE OF "BRAND NAME OR EQUAL" IN FEDERAL AVIATION ADMINISTRATION (FAA)
SUBJ: CONSTRUCTION SPECIFICATIONS

1. PURPOSE. This order provides procedures for using "brand name or equal" clauses in FAA construction contract specifications.

2. DISTRIBUTION. This order is distributed to division level in the Program Engineering, Systems Maintenance, Logistics, and Advanced Systems Acquisition Services and Chief Counsel in Washington headquarters; branch level in the regional Airway Facilities divisions; division level in the regional Logistics divisions, and regional and center Assistant Chief Counsels; and to the director level at the FAA Technical Center and Mike Monroney Aeronautical Center.

3. BACKGROUND. Many FAA construction specifications specify some material by "brand name or equal" without specifying salient characteristics to adequately define the basis for an "or equal" determination. This practice is in violation of Part 36 of the Federal Acquisition Regulations (FAR),

Specifically, FAR Par 36.202(c) states:

When brand name or equal descriptions are necessary, specifications must clearly identify and describe the particular physical, functional, or other characteristics of the brand-name items which are considered essential to satisfying the requirement.

Part 1210.004-70(c) (1) of the Transportation Acquisition Regulation (TAR) states:

Brand name or equal purchase descriptions shall specify each physical or functional characteristic of the product that is essential to the intended use. Failure to do so may result in a defective solicitation and the necessity to resolicit the requirement. Care must be taken to avoid specifying characteristics that cannot be shown to materially affect the intended end use and which unnecessarily restrict competition.

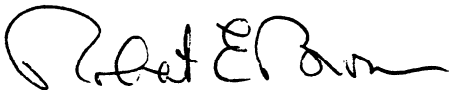
4. ACTION. The FAA Chief Counsel has recommended that all FAA specifications currently used for construction be examined for improper use of "brand name or equal" clauses.

a. All new specifications shall be examined to ensure compliance with the regulations and all existing specifications shall be corrected as soon as practical, but not later than April 14, 1994.

Distribution: A-W(PS/SM/SA/GC)-2; A-YZ-1; A-XYZ(GC)-2;
A-X(AF)-3; A-X(LG)-2

Initiated By: APS-120

b. Each regional Airway Facilities **division** shall develop a list of all current construction specifications, indicate whether or not they include improper "brand name or equal" clauses, and a date by which any improper specification will be corrected. The lists shall be forwarded to **APS-100** by March 1, 1990. Progress reports shall be forwarded every six months thereafter until all specifications have been revised to comply with the FAR and TAR provisions.



Robert E. Brown
Director, Program
Engineering Service